

ASSEMBLY BILL

No. 2118

Introduced by Assembly Member Butler

February 23, 2012

An act to amend Sections 5133, 5311, and 5322 of, and to add Sections 5144, 5314.7, and 5323 to, the Public Utilities Code, relating to household goods carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2118, as introduced, Butler. Household goods carriers.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Under existing law, the Household Goods Carriers Act, household goods carriers are subject to the jurisdiction and control of the commission. The act prohibits a household goods carrier from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in the state, including advertising, soliciting, offering, or entering into an agreement, without a permit issued by the commission authorizing transportation entirely within the state, or a valid operating authority issued by the Federal Motor Carrier Safety Administration, for interstate transportation. The act declares that it is not to be construed as a regulation of interstate or foreign commerce, except as permitted under the United States Constitution and the acts of Congress.

This bill would additionally prohibit a household goods carrier from arranging as a broker, as defined, for the transportation of used household goods and personal effects. This bill would permit the commission to order an Internet Web site provider or the source of a posting on the Internet Web site offering service requiring a license to

order that the provider or the source of the listing remove the Internet Web site or listing offering unlicensed service, as prescribed. This bill would require a household goods carrier with an Internet Web site to add a link to that site that directs consumers to an Internet Web site hosted by the commission that promotes consumer rights and protection.

Existing law requires telephone companies and related entities, as specified, upon demand and the order of a magistrate, to provide the commission, or an authorized official of the commission, access to the name and address of the subscriber to a telephone number being use by an unlicensed household goods carrier. Existing law prescribes the circumstances under which telephone corporations may release information regarding residential subscribers without their written consent.

This bill would require telephone companies, as prescribed, to provide this access to the commission as specified above, without the written consent of the subscriber.

Under the act, every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of the act, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and if the violation is not willful, is punishable by fine of not more than \$1,000 or by imprisonment in the county jail as prescribed, or both.

This bill would provide that the fine for this misdemeanor is instead not more than \$5,000.

This bill would also provide that a household goods carrier that falsifies licensure, membership in an association, or location is liable for a civil penalty of not more than \$5,000 per day of violation.

Because a violation of the act or an order of the commission is a crime, this bill would impose a state-mandated local program by expanding the scope of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5133 of the Public Utilities Code is
2 amended to read:

3 5133. (a) No household goods carrier shall engage, or attempt
4 to engage, in the business of the transportation of used household
5 goods and personal effects, by motor vehicle over any public
6 highway in this state, including advertising, soliciting, offering,
7 *arranging as a broker*, or entering into an agreement regarding
8 the transportation of used household goods and personal effects,
9 unless both of the following are satisfied:

10 (1) For transportation of household goods and personal effects
11 entirely within this state, there is in force a permit issued by the
12 commission authorizing those operations.

13 (2) For transportation of household goods and personal effects
14 from this state to another state or from another state to this state,
15 there is in force a valid operating authority issued by the Federal
16 Motor Carrier Safety Administration.

17 (b) A household goods carrier that engages, or attempts to
18 engage, in the business of the transportation of used household
19 goods and personal effects in violation of subdivision (a) may not
20 enforce any security interest or bring or maintain any action in law
21 or equity to recover any money or property or obtain any other
22 relief from any consignor, consignee, or owner of household goods
23 or personal effects in connection with an agreement to transport,
24 or the transportation of, household goods and personal effects or
25 any related services. A person who utilizes the services of a
26 household goods carrier operating in violation of subdivision (a)
27 may bring an action in any court of competent jurisdiction in this
28 state to recover all compensation paid to that household goods
29 carrier.

30 (c) The operation of a motor vehicle used in the business of
31 transporting household goods and personal effects by a household
32 goods carrier that does not possess a valid permit or operating
33 authority, as required by subdivision (a), constitutes a public

1 nuisance. Any peace officer, as defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2 of the Penal
3 Code, may remove any motor vehicle located within the territorial
4 limits in which the officer may act, when the vehicle is found upon
5 a highway and is being used in a manner constituting a public
6 nuisance. At the request of the commission, the Attorney General,
7 district attorney, city attorney, or county counsel, the law
8 enforcement agency may impound the vehicle for a period not to
9 exceed 72 hours to enable the requesting agency to abate the public
10 nuisance, to obtain an order from the superior court of the county
11 in which the vehicle has been impounded to prevent the use of the
12 motor vehicle in violation of law, and to obtain any other remedy
13 available under law as permitted by Section 5316.

14 (d) Any person having possession or control of used household
15 goods or personal effects, who knows, or through the exercise of
16 reasonable care should know, that a household goods carrier
17 transported those household goods or personal effects in violation
18 of subdivision (a), shall release the household goods and personal
19 effects to the consignor or consignee, as defined in Section 5142,
20 upon the request of the consignor or consignee. If that person fails
21 to release the household goods and personal effects, any peace
22 officer, as defined in subdivision (c), may take custody of the
23 household goods and personal effects and release them to the
24 consignor or consignee.

25 (e) *For the purposes of this section, “broker” means a person*
26 *engaged for others in the act of arranging, for compensation, the*
27 *transportation of used household goods by a motor vehicle over*
28 *the highways of this state for or on behalf of a shipper, consignor,*
29 *or a consignee.*

30 SEC. 2. Section 5144 is added to the Public Utilities Code, to
31 read:

32 5144. Every household goods carrier shall add a link to the
33 household goods carrier’s Internet Web site, if any, that directs all
34 consumers to an Internet Web site hosted by the commission that
35 promotes consumer rights and protection.

36 SEC. 3. Section 5311 of the Public Utilities Code is amended
37 to read:

38 5311. (a) Every household goods carrier and every officer,
39 director, agent, or employee of any household goods carrier who
40 violates or who fails to comply with, or who procures, aids, or

1 abets any violation by any household goods carrier of any provision
2 of this chapter, or who fails to obey, observe, or comply with any
3 order, decision, rule, regulation, direction, demand, or requirement
4 of the commission, or of any operating permit issued to any
5 household goods carrier, or who procures, aids, or abets any
6 household goods carrier in its failure to obey, observe, or comply
7 with any such order, decision, rule, regulation, direction, demand,
8 requirement, or operating permit, is guilty of a misdemeanor, and
9 is punishable by fine of not more than ~~one~~ *five* thousand dollars
10 ~~(\$1,000)~~ *(\$5,000)* or by imprisonment in the county jail for not
11 more than three months, or both. If a violation is willful, each
12 willful violation is punishable by fine of not more than ten thousand
13 dollars (\$10,000) or by imprisonment in the county jail for not
14 more than one year, or both.

15 (b) Any person who violates subdivision (a) of Section 5133,
16 is guilty of a misdemeanor, and is punishable by fine of not more
17 than ten thousand dollars (\$10,000), by imprisonment in the county
18 jail for not more than one year, or both, for each violation.

19 SEC. 4. Section 5314.7 is added to the Public Utilities Code,
20 to read:

21 5314.7. Every household goods carrier that falsifies licensure,
22 membership in an association, or location is subject to a penalty
23 of not more than five thousand dollars (\$5,000) per day that the
24 carrier is in violation of this section.

25 SEC. 5. Section 5322 of the Public Utilities Code is amended
26 to read:

27 5322. (a) The Legislature finds and declares that advertisement
28 and use of telephone service is essential for household goods
29 carriers to obtain business and conduct intrastate moving services.
30 The unlawful advertisement by unlicensed household goods carriers
31 has required properly licensed and regulated household goods
32 carriers to compete with unlicensed household goods carriers using
33 unfair business practices. Unlicensed household goods carriers
34 have also exposed citizens of the State of California to
35 unscrupulous persons who portray themselves as properly licensed,
36 qualified, and insured household goods carriers. Many of these
37 unlicensed household goods carriers have been found to have
38 perpetrated acts of theft, fraud, and dishonesty upon unsuspecting
39 citizens of the State of California.

1 (b) (1) The Legislature finds and declares that the termination
 2 of telephone service utilized by unlicensed household goods
 3 carriers is essential to ensure the public safety and welfare.
 4 Therefore, the commission should take enforcement action as
 5 specified in this section to disconnect telephone service of
 6 unlicensed household goods carriers who unlawfully advertise
 7 moving services in yellow page directories and other publications.
 8 The enforcement action provided for by this section is consistent
 9 with the decision of the Supreme Court of the State of California
 10 in *Goldin, et al. v. Public Utilities Commission et al.*, (1979) 23
 11 Cal. 3d 638.

12 (2) ~~For~~ *Notwithstanding Section 2891*, for purposes of this
 13 section, a telephone utility, or a corporation that holds a controlling
 14 interest in the telephone utility, or any business that is a subsidiary
 15 or affiliate of the telephone utility, that has the name and address
 16 of the subscriber to a telephone number being used by an
 17 unlicensed household goods carrier shall provide the commission,
 18 or an authorized official of the commission, upon demand, and the
 19 order of a magistrate, access to this information. A magistrate may
 20 only issue an order, for the purposes of this subdivision, when the
 21 magistrate has made the findings required by subdivision (c).

22 (c) Any telephone utility operating under the jurisdiction of the
 23 commission shall refuse telephone service to a new customer and
 24 shall disconnect telephone service of an existing customer only
 25 after it is shown that other available enforcement remedies of the
 26 commission have failed to terminate unlawful activities detrimental
 27 to the public welfare and safety, and upon receipt from any
 28 authorized official of the commission of a writing, signed by a
 29 magistrate, as defined by Sections 807 and 808 of the Penal Code,
 30 finding that probable cause exists to believe that the customer is
 31 advertising or holding out to the public to perform, or is
 32 performing, household goods carrier services without having in
 33 force a permit issued by the commission authorizing those services,
 34 or that the telephone service otherwise is being used or is to be
 35 used as an instrumentality, directly or indirectly, to violate or to
 36 assist in violation of the laws requiring a household goods carrier
 37 permit. Included in the writing of the magistrate shall be a finding
 38 that there is probable cause to believe that the subject telephone
 39 facilities have been or are to be used in the commission or
 40 facilitation of holding out to the public to perform, or in

1 performing, household goods carrier services without having in
2 force a permit issued by the commission authorizing those services,
3 and that, absent immediate and summary action, a danger to public
4 welfare or safety will result.

5 (d) Any person aggrieved by any action taken pursuant to this
6 section shall have the right to file a complaint with the commission
7 and may include therein a request for interim relief. The
8 commission shall schedule a public hearing on the complaint to
9 be held within 21 calendar days of the filing and assignment of a
10 docket number to the complaint. The remedy provided by this
11 section shall be exclusive. No other action at law or in equity shall
12 accrue against any telephone utility because of, or as a result of,
13 any matter or thing done or threatened to be done pursuant to this
14 section.

15 (e) At any hearing on complaint pursuant to subdivision (d), the
16 commission staff shall have the right to participate, including the
17 right to present evidence and argument and to present and
18 cross-examine witnesses. The commission staff shall have both
19 the burden of providing that the use made or to be made of the
20 telephone service is to hold out to the public to perform, or to assist
21 in performing, services as a household goods carrier, or that the
22 telephone service is being or is to be used as an instrumentality,
23 directly or indirectly, to violate or to assist in violation of the
24 licensing laws as applicable to household goods carriers and that
25 the character of the acts is such that, absent immediate and
26 summary action, a danger to public welfare or safety will result,
27 and the burden of persuading the commission that the telephone
28 services should be refused or should not be restored.

29 (f) The telephone utility, immediately upon refusal or
30 disconnection of service in accordance with subdivision (c), shall
31 notify the customer or subscriber in writing that the refusal or
32 disconnection of telephone service has been made pursuant to a
33 request of the commission and the writing of a magistrate, and
34 shall include with the notice a copy of this section, a copy of the
35 writing of the magistrate, and a statement that the customer or
36 subscriber may request information from the commission at its
37 San Francisco or Los Angeles office concerning any provision of
38 this section and the manner in which a complaint may be filed.

39 (g) Each contract for telephone service, by operation of law,
40 shall be deemed to contain the provisions of this section. The

1 provisions shall be deemed to be a part of any application for
2 telephone service. Applicants and customers for telephone service
3 shall be deemed to have consented to the provisions of this section
4 as a consideration for the furnishing of the service.

5 (h) The terms “person,” “customer,” and “subscriber,” as used
6 in this section, include a subscriber to telephone service, an
7 applicant for that service, a corporation, a company, a partnership,
8 an association, and an individual.

9 (i) The term “telephone utility,” as used in this section, includes
10 a “telephone corporation” and a “telegraph corporation,” as defined
11 in Division 1 (commencing with Section 201).

12 (j) The term “authorized official,” as used in this section,
13 includes the Executive Director of the Public Utilities Commission
14 or any commission employee designated pursuant to paragraph
15 (5) of subdivision (a) of Section 830.11 of the Penal Code.

16 SEC. 6. Section 5323 is added to the Public Utilities Code, to
17 read:

18 5323. If the commission determines after an investigation that
19 an unlicensed household goods carrier has an Internet Web site or
20 other posting on an Internet Web site offering service requiring a
21 license, the commission may order the Internet Web site’s provider
22 or the source of the listing, if under the jurisdiction of the state, to
23 remove the Internet Web site or the listing offering the unlicensed
24 service.

25 SEC. 7. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.